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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/230,048	03/12/1999	BERNHARD FLECKENSTEIN	058315/0129	4939

7590 03/15/2002  
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EXAMINER

KAUSHAL, SUMESH

ART UNIT PAPER NUMBER

1636

DATE MAILED: 03/15/2002

19

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/230,048

Applicant(s)

FLECKENSTEIN ET AL.

Examiner

Sumesh Kaushal Ph.D.

Art Unit

1636

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 31 December 2001. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☒ Applicant's reply has overcome the following rejection(s): 35USC 101 and 35 USC 112(1).
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 1-6,8-12,16,18-20,28,34 and 35.

Claim(s) withdrawn from consideration: none.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

Continuation of 2. NOTE: The proposed amendments would require further consideration and/or search under 35 USC 112(2) regarding indefiniteness issues.

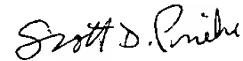
Claim 9 would require further consideration under 35 USC 112(2) because it is unclear what is "an isolated nucleic acid molecule coding consisting of the sequence of SEQ ID NO: 1 and coding for v-IL-6, which is obtainable by recombinant expression".

Claim 10 would require further consideration under 35 USC 112(2) because SEQ ID NO: 2 is an amino acid sequence and not a nucleic acid molecule as claimed.

Claim 11 may be duplicate of claim 9 as the claimed subject matter of claim 9 is unclear

Claim 34-35 would require further consideration under 35 USC 112(2) because claim 34 does not recite any active process.

In addition, the amendment filed on Paper No. 18, 12/31/01 fails to comply Amendment Practice under 37 CFR § 1.121 because the marked up version does not match with the clear version of the amended claims (see claim 5, 8, and 9). Furthermore, the recent amendment does not indicate how many times a particular claim has been amended.



**SCOTT D. PRIEBE, PH.D**  
**PRIMARY EXAMINER**